

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.5220 OF 2004

Shri.A.K.Gupta and Ors. ..Applicants

Vs.

Sukhdayal Mehta . . Respondent

Mr.P.R.Pandey Advocate for Applicants
Mr.S.R.Shinde A.P.P. for the State

CRIMINAL APPLICATION NO.5329 OF 2005

Shri.R.K.Gupta ..Applicant

Vs.

Sukhdayal Mehta . . Respondent

Mr.P.R.Pandey Advocate for Applicant
Ms.S.V.Gajare A.P.P. for State

CORAM: SMT.V.K.TAHILRAMANI, J.
DATE : SEPT. 15, 2005

P.C.

1. Heard the learned advocate for the applicants, respondent-original complainant in person who is present in Court and the learned A.P.P. for the State.

2. The applicants are seeking quashing of proceedings relating to Criminal Case No.903/S/2002 pending before the learned Metropolitan Magistrate, 24th Court, Borivali. In the said cases, process has been issued against the applicants under Section 138 of Negotiable Instruments Act. The learned advocate for the applicants submitted that the learned Magistrate committed an error in issuing process and the said process deserves to be set aside. It is further submitted that if the process issued against the applicants is set aside, the proceedings in respect of the applicants, would come to an end.

3. For the reasons recorded in the decision of this Court in the case of **V.K.Jain and others Vs. Pratap V. Padode** reported in 2005(3) Mh.L.J.778, I am of the opinion that the applicants have an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my view, it would be appropriate that the applicants prefer a revision before the concerned Sessions Court against the order of the Magistrate

issuing process.

4. Liberty is granted to the applicants to prefer the necessary revision before the concerned Sessions Court. The learned advocate for the applicants makes a statement that the necessary revision will be preferred on or before 17.10.2005. I am informed by complainant Mr.Mehta that the next date before the trial Court is 17.10.2005.

. The complainant Mr.Sukhdayal Mehta fairly states that the matter will be argued before the Revisional Court entirely on merits and no objection will be raised in respect of delay in filing revision.

5. It is stated on behalf of the applicants that in the said case, NBWs came to be issued against the applicants. It is prayed that the said NBWs be quashed. I am not inclined to quash NBWs as in my opinion, it would be appropriate that the applicants prefer application before the trial Court for setting aside the said NBWs.

. Liberty is granted to the applicants to prefer the necessary application before the trial Court. The learned advocate for the applicants states that the necessary application will be preferred within five weeks from today. In order to enable the applicants to take necessary steps for setting aside NBWs, the said NBWs are stayed for a period of five weeks from today.

6. On the necessary revision being preferred by the applicants before the concerned Sessions Court, the concerned Sessions Court shall dispose of the matter on merits after hearing the necessary parties.

7. Criminal Applications are disposed of.

[V.K.TAHILRAMANI, J.]